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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GABOR STEIN,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

ANSWER

07 Civ. 2684 (LMM)

ELECTRONICALLY FILED

Defendant United States of America, by its attorney, Michael J. Garcia, United States Attorney for the Southern District of New York, respectfully answers plaintiff's complaint on information and belief as follows:

1. Admits that the United States and Gabor Stein are, respectively, defendant and plaintiff in this action and that United States Attorney Michael J. Garcia represents the defendant in this action; denies knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations in paragraph I of the complaint.

2. Paragraph II of the complaint sets forth plaintiff's allegation of jurisdiction to which no response is required.

3. Paragraph III of the complaint references a six paragraph “Statement of Claim,” to which the United States separately responds as set forth in paragraphs four through nine of the Answer.

4. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 1 of the Statement of Claim.

5. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 2 of the Statement of Claim.

6. Denies the allegations of paragraph 3 of the Statement of Claim, except admits that the Internal Revenue Service (“IRS”) assessed a Trust Fund Recovery Penalty of \$29,701 for the tax period ended September 30, 1995, and that plaintiff’s claim for a refund for this penalty was denied by the IRS on July 19, 2005. Defendant further admits that the IRS assessed a Trust Fund Recovery Penalty of \$19,116 for the tax period ended December 31, 1995, that the plaintiff’s claim for a refund was filed September 7, 2004, and that the claim was denied by the IRS on March 2, 2005. Defendant further admits that the IRS assessed a Trust Fund Recovery Penalty of \$3,552 for the tax period ended December 31, 1996, and that the plaintiff’s claim for a refund was denied by the IRS on July 19, 2005.

7. Denies the allegations of paragraph 4 of the Statement of Claim, and avers that, in denying plaintiff’s refund claim, the IRS rejected plaintiff’s affirmative defense that the penalty was imposed beyond the statute of limitations.

8. Denies that allegations of the first sentence of paragraph 5 of the Statement of Claim; denies knowledge or information sufficient to form a belief as to the truth of the second through the fifth sentences of paragraph 5. The sixth sentence of paragraph 5 sets forth plaintiff’s characterization of his claims, to which no response is required, but defendant admits

that the IRS has communicated with plaintiff regarding his tax liability for the years 1995 and 1996. With respect to the seventh and eighth sentences of the Statement of Claim, the IRS admits an accounting firm purporting to act on behalf of plaintiff sent a letter dated June 14, 2006 to Mr. Michael Campagna of the Internal Revenue Service, and respectfully refers the Court to the letter, which is attached to the plaintiff's Statement of Claim, for a true and accurate statement of its contents.

9. Paragraph 6 of the Statement of Claim sets forth plaintiff's characterization of his complaint to which no response is required.

10. Paragraph IV of the complaint sets forth plaintiff's prayer for relief to which no response is required.

FIRST DEFENSE

Plaintiff's suit is barred by the applicable statute of limitations, 26 U.S.C. § 6532.

SECOND DEFENSE

Plaintiff failed to timely file administrative claims for refunds, as required by 26 U.S.C. § 6511.

THIRD DEFENSE

Plaintiff waived the statute of limitations applicable to the IRS's imposition of Trust Fund Recovery Penalties, 26 U.S.C. § 6501.

WHEREFORE, defendant United States of America demands judgment dismissing plaintiff's complaint and granting such further relief as this Court deems proper, including costs and disbursements.

Dated: New York, New York
November 9, 2007

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